



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT NAIROBI

CIVIL CASE NO. 145 OF 2014

ROSE NJERI MUNORU & 12 OTHERS.....PLAINTIFFS

VERSUS

HANNAH MWIKAHI MUTURI & 4 OTHERS..... DEFENDANTS

R U L I N G

By a notice of motion dated 30th June 2014 and filed in court on the same day, the 13 applicants herein have sought from this court, orders for committal of MARY WANJIKU KIUNA, MARGARET WAITHIRA NG'ANG'A, MARGARET MUMBI MIAKO and REBECCA GAKENIA MUIGAI, the 2nd, 3rd, 4th and 5th respondents to prison for such period of time as the court may deem fit, together with costs of the application and for obtaining leave to cite the respondents for contempt.

The application is based on 5 grounds namely;

- a) That the cited respondents have breached/disobeyed court orders made on 30th May 2014 and issued on 3rd June 2014 by Hon. Mr. Justice Waweru.
- b) That orders made on 30th May 2014 restrained the said respondents by way of a prohibitory injunction from acting, occupying, transacting, holding, participating or in any way dealing with the assets and affairs of the Lari Division Women Association and that the said orders were to remain in force until 21st July 2014.
- c) That the said respondents were served with the said order as per the affidavit of service sworn by Patrick Muniu Mutura on 11th June 2014.
- d) That despite being served with the said restraining order, the cited respondents have refused to comply and persist in such refusal by collecting rent from tenants of Lari Division Women Association on 5th June 2014 a day after they were served with the said restraining order.
- e) That the applicants have no other way of enforcing the said order.

The application is further supported by the sworn affidavit of Rose Njeru Munoru the 1st applicant/plaintiff on behalf of the other plaintiffs/applicants, and her further affidavit sworn on 21st July 2014.

The plaintiffs' application for contempt of court is opposed by the respondents/defendants through their replying affidavits sworn by Margaret Waithera Ng'ang'a on 20th June 2014; Margaret Mumbi Miako sworn on 16th July 2014; Mary Wanjiku Kiuna sworn on 16th July 2014; and Rebecca Gakenia Muigai sworn on 16th July 2014.

The parties hereto agreed to dispose of the application herein by way of written submissions.

The plaintiffs/applicants filed their submissions on 4th September 2014 whereas the 2nd – 5th defendants/respondents filed their written submissions on 18th September 2014.

I have carefully perused the pleadings by the parties. The application seeking for leave to cite the respondents for contempt of court, the application herein for contempt proceedings supported by the affidavits; and the replying affidavits by the respective respondents as well as the parties' written submissions.

The brief facts of this case are that the defendants/respondents were duly elected office bearers of Lari Division Women Association and that since the formation of the said association in 1989, no annual general meeting has ever been held for purposes of electing new office bearers, in total contravention of the Association's Constitution and Rules. In addition, it is alleged that no books of accounts, annual returns and list of members was ever filed with the Registrar of Societies. The applicants/plaintiffs herein are fully paid up members of the association and on realization that the defendants were running the affairs of the association illegally and mismanaging the assets and resources without accounting to its members through an annual general meeting since the society's inception, they requisitioned and convened a special general meeting on 8th August 2013 wherein the defendants failed to turn up and since one of the agenda items was to hold elections for official, the following officials were duly elected:-

1. Rose Njeru Munoru – as the Chairlady
2. Hahhah Wanja Ndungu – Secretary
3. Rahab Njeri Kamau – Treasurer
4. Mary Wairimu Njogu – Member

Other elected officials to represent areas were

1. Alice Muthoni, Rose Munoru, Esther Nyambura Njoroge – Kirenga area.
2. Njeri Kamau, Alice Warigia Ngure, Esther Nyambura Njoroge – Kijabe area
3. Loise Wambui Chege, Lucy Wanjiru Mbugua, Pauline Wa Namba – Kinale area
4. Hanna Wanja Ndung'u, Mary Njogu, Teresia Njango – Gatimaiyu area
5. Zipporah Wanjiku Kamau, Dorcas Njeri Mwaura, Mary Wairimu Kinyanjui – Lari area.

It is alleged that the defendants have refused, failed and or neglected to give vacant possession of the offices to enable the newly elected officials assume their offices.

The plaintiffs/applicants therefore sought the intervention of the court to compel the defendants herein to vacate office and hand over the affairs of the association to the plaintiffs.

They have attached copies of certificates of membership to the association, the Constitution, notice of requisition for a special annual general meeting, Inooro Radio announcement for the special annual general meeting to be held on 8th August 2013 9.00 a.m. at Kimende Post Office, minutes of the annual

general meeting attended by 405 members with a group photo of the members who attended; certificate of registration No. SOC/28960 and certification by the Deputy Registrar of Societies that the defendants herein were the registered office bearers among other documents in support of the suit and the application.

The parties agreed to dispose of the application as filed and opposed by way of written submissions.

I have carefully considered the application by way of notice of motion. The same is dated 23rd May 2014 and filed in court on the same day and supported by the 1st plaintiff's affidavit. The application was placed before **Hon. Justice Waweru** on 30th May 2014 and in the presence of Mr. Gathu Advocate for the plaintiffs/applicants, *ex parte* in the first instance under the certificate of urgency, the Hon. Judge granted an interim injunction in terms of prayer 2 of the application to remain in place until the hearing date this 21st July 2014. Prayer No. 2 thereof read:

“2. That this Honourable Court be pleased to grant an interim prohibitory injunction and/or conservatory orders restraining the defendants, their servants, agents, employees or whosoever from acting, occupying, transacting, holding, participating, or in any way dealing with the assets, incomes and affairs of the Lari Division Women Association pending hearing and determination of the application.”

The said order was extracted on 3rd June 2014 and on 4th June 2014, by an affidavit of Patrick Muniu Mutua, sworn on 11th June 2014, was served upon all the defendants/respondents at their respective places of residence as directed by the 1st plaintiff. The said order had a penal notice appended thereto.

It is the said court order that the plaintiffs allege was disobeyed and consequent upon they sought leave of court to cite the defendants for contempt of court. The application for leave was filed on 26th June 2014. It is dated 25th June 2014.

The particulars of disobedience as set out in paragraph 4 of the grounds were that the defendants had proceeded to collect rent from tenants of Lari Division Women Association on 5th June 2014 just a day after the service of the orders complained of. The application was supported by the verifying affidavit of the 1st plaintiff Rose Njeri Munoru and a statement describing the parties and setting out the contempt complained of. **Hon. Waweru** granted the leave sought on 25th June 2014 at 2.15 p.m. giving the plaintiffs 14 days within which to file the substantive application. On 30th June 2014, the applicants/plaintiffs filed the substantive notice of motion and the same was certified as urgent by **Hon. Waweru** who directed the plaintiffs' advocates to serve and appear for interparties mention on 7th July 2014 for further orders.

The defendants have denied being in contempt of court orders. The 3rd and 4th defendants admit being personally served with the court order but deny disobeying it. The 2nd and 5th defendants deny ever personally served with the court order or even receiving copies from the 1st defendant who is since deceased.

The defendants depose in their affidavits that the said rent was collected by the chairlady of the Association who is the 1st defendant, now deceased and that as the payee is deceased and the tenant payer did not swear an affidavit stating who received the rent, the application for contempt cannot succeed. They also deny the plaintiffs' contention that the 1st defendant was bedridden at the material time rent was allegedly collected as there is no evidence to that effect.

They maintained that the plaintiff had not proved that there was personal service of the court order allegedly disobeyed or that they had actual knowledge of the existence of the court order and that it must be established beyond reasonable doubt that they acted in disobedience of the court order. They cited the case of **International Ltd – Vs – Joseph Mathenge Mugo HCC 242/13.**

The plaintiffs on the other hand maintain that the defendants were served with a court order on 4th June 2014 as evidenced by the affidavit of Patrick Muniu Muturi; that the 3rd and 4th defendants were served personally whereas the 2nd and 5th defendants were served through the 1st defendant at her residence who promised to deliver the same to the 2nd and 5th defendants. It is contended that on 5th and 7th July 2014, the defendants jointly and severally collected rent from the tenants of the Association, one Teresa Wambui as shown by copy of receipt annexed to the supporting affidavits. They further contend that even if there was no personal service of the order upon the respondent, it was clear that they were aware of its existence as shown by their instructing an advocate on 11th June 2014. They also depose that the 1st defendant was critically ill and bedridden and could not have gone round collecting rent from tenants of the Association and that by 5th July 2014, the 1st defendant had already passed away.

They relied on the cases of **Africa Management Communication International Ltd – Vs – Joseph Mathenge Mugo & Another HCC 242/2013, NRB** and **Petition No. 23/2013 (IC) TSC – Vs – KNUT, Wilson Sossion & Mudzo Nzili** in support of their contention.

The issue for my determination is whether or not the respondents/defendants as cited were aware of the court order issued on 3rd June 2014 and if so, whether they were in breach of the said court order to warrant committal to prison or face penal consequences by the court.

The substantive law governing contempt of court is Section 5 (1) of the Judicature Act which provides that

“The High Court and the Court of Appeal shall have the same power to punish for contempt of court as is for the time being possessed by the High Court of Justice in England and that power shall extend to upholding the authority and dignity of the Subordinate Courts.”

In other words this court is seized of the jurisdiction to punish any person or individual for contempt of court orders.

The procedural law governing contempt of court is Section 63 of the Civil Procedure Act which provides:-

“In order to prevent the ends of justice from being defeated the court may, if it is so prescribed

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- a. ...
 - b. ...
 - c. ***Grant a temporary injunction and in case of disobedience commit the person guilty thereof to prison and order that his property to be attached and sold.***

Under Order 40 rule (3) of the Civil Procedure Act, in case of disobedience, or of breach of any such terms, the court granting an injunction may order the property of the person guilty of such disobedience or breach to be attached, and may also order such person to be detained in prison for a term not exceeding six months unless in the meantime the court directs his release.”

On the issue of whether or not the defendants as cited were served with or had knowledge of the court order complained of, there is admission that the 3rd and 4th defendants were personally served with the said court order as per the process server’s affidavit of service.

The next issue is therefore whether or not they disobeyed the said court order and if so, to what extent. I have carefully perused the said court order which had penal notice on the face of the said order. But that personal service notwithstanding, it is alleged that the 2nd and 5th defendants were not personally served with the said court order and that they are therefore not in breach thereof since it is alleged they never

received it from the 1st defendant who is now deceased.

Following the above situation, I will determine whether it was mandatory to have the court order personally served upon the defendants/respondents. Until 2010, the courts had been very strict in entertaining applications for civil contempt of court. Such applications could only be allowed if the particular order of the court had been served on that person and the copy of that order endorsed with a notice informing the person whom the copy is served that if he disobeys the order he is liable to the process of execution to compel him to obey the order. See the case of **Mwangi Wanodu – Vs – Nairobi City Commission CA 95/88 (UR)** and **Jacob Zedekiah Ochoo & Another – Vs – George Aura Okombo CA 36/89 (UR)**.

It therefore follows that until recently, the issue of knowledge of the existence of court orders being sufficient was alien in our jurisprudence.

In **Kariuki & Others – Vs – Minister for Gender, Sports, Culture and Social Services & Others (2004) 1KLR 588**, the court held thus,

“... but in our law, service is higher than knowledge and since the service was frustrated ... I shall hold in accord with the existing law that there was no service.”

However, the law has since become clear and as matters stand today, knowledge of the existence of a court order supersedes personal service and for good reason, (See **Basil Criticos – Vs – Attorney General & 8 Others [2012] eKLR**.)

And as was held in **Kenya Tea Growers Association – Vs – Francis Atwoli & 5 Others, Petition No. 64/2010**, the Court of Appeal opined as follows:

“In the case before me, I am more that satisfied that even at the higher level of beyond reasonable doubt, when an individual has been served with and/or has knowledge of a court order but not only ignores it but infact makes others to do the same, the threshold for contempt has been met. Francis Atwoli infact went further to arrogate himself the decision to determine when the strike should end despite the fact that the “court order had stopped it. He went further to interpret it as made without jurisdiction and that only the workers court”, the Industrial court had jurisdiction to determine the matter. He did not do so once but on a number of occasions as he flew by helicopter from place to place on 18th October 2012. His contempt was obvious and his conduct and words can attract no other finding.”

The above point is that where a party clearly acts and shows that he had knowledge of a court order, the strict requirement that personal service must be proved is rendered unnecessary. That should be the correct legal position as adopted by **Lenaola J in Basil Criticos – Vs – Attorney General & 8 Others** case, and I adopt that position as good law.

It has been admitted that the 3rd and 4th defendants were personally served with the court order so the issue of knowledge does not arise. The only issue for them is whether they disobeyed the said court order. On the other hand, the 2nd and 5th defendants deny being served with court order as alleged, and therefore the issue for the court to determine is whether they had knowledge of the said court order, and if so, whether they disobeyed the said order.

Having set out the rival submissions by counsels, I take the following view, looking at the depositions by the defendants:-

The 2nd defendant Mary Wanjiru Kiuna deposes that she was never served as sworn by the process server in this affidavit of service and that the said documents were never forwarded to her by the 1st defendant/respondent as alleged. The 5th defendant Rebecca Gakenia Muigai too depones that she was not served with the documents referred to in paragraph 3 of the process server’s affidavit of service and

that he did not serve her personally and neither were the said documents forwarded to her by the 1st defendant/respondent as alleged.

It is not denied by the 2nd and 5th defendants/respondents that they work as a committee for Lari Division Women Association, being the officials whose ouster was being sought by the plaintiffs/applicants herein and against whom the injunction was sought. In addition, on 23rd June 2014, only the 3rd defendant filed a replying affidavit to the application for injunction. There is no indication that she had the authority that she was swearing it on behalf of all the other defendants. The court is unable to find any memorandum of appearance by all the defendants dated 11th June 2014 by their counsel on record as deposed in paragraph 6 of the further affidavit sworn by Rose Njeri Munoru to indicate that that would be an indication that the 2nd and 5th defendants were aware of the order herein. There is also no defence filed on record by any of the defendants.

The said Rose Njeri Munoru has also deposed that the 1st defendant whom the process server allegedly handed over the orders and who received on behalf of the 2nd and 5th defendants had been critically ill and almost bed ridden for the last two years due to old age and therefore her capacity to manage affairs of the Association, (see paragraph 8 of the further affidavit), was in issue. The question for this court therefore is whether the 2nd and 5th defendants became aware of the court order served on 1st, 3rd and 4th defendants. It should also be noted that on 27th May 2014, the process server had effected service of the plaint, notice of motion and mention notice dated 27th May 2014 upon the said lady (deceased) and in paragraph 4 and 5 thereof he described her as “elderly” who looked “frail” and that upon being explained the purpose of the visit, she received the documents on her own behalf and on behalf of all the other defendants but declined to acknowledge receipt on the principal copies claiming that she needed to call a meeting of all the other defendants and read through the documents and consult their lawyers first. These facts as deposed were never denied by the defendants. This is the same lady who is also said to have received the order subject of this ruling on behalf of the 2nd and 5th defendants and promising to give them.

Nothing that it is not disputed that the defendants herein were all officials of the Association although their being in office legitimately was the issue before court, and considering the circumstances of this case, I am not persuaded that the 2nd and 5th defendants were aware of the said court order as there is no means of verifying whether, upon service on the other defendants on 4th June 2014, the information thereof was relayed onto the said 2nd and 5th defendants immediately, and in any event, earlier than 5th June 2014 when the alleged rent was collected from tenants of the Association.

The service of the order was effected at or about noon, and in the absence of any information as to how the two defendants would have known or legitimately been expected to know the existence of that order, I find that they were not aware of the order in question, noting that the plaintiffs do not disclose the respective positions held by the two defendants in the Association.

Consequently, I would, at this stage, hold that the 2nd and 5th defendants were wrongly cited for contempt as there is nothing to demonstrate that they were in the first instance, aware of the said court order, and I accordingly proceed to discharge them. The second issue would then only affect the 3rd and 4th defendants, as the 1st defendant died on 11th June 2014.

The 3rd and 4th defendants admittedly received the court order in question so the question is whether they disobeyed the said court order and if so, what are the penal consequences.

The plaintiffs alleged that notwithstanding the served court order, the defendants proceeded and collected rent from tenants of the Association. I have perused all the pleadings as filed by the plaintiffs and regrettably, I am unable to find any reference to any specific property or asset of the Association. What is a semblance thereof is described as follows in the grounds in support of the notice of motion dated 23rd May 2014 paragraph 6 –

“The defendants/respondents have been engaged in misusing and plundering the resources/assets and income of the association.” And paragraph 8 of the affidavit by Rose Njeru Munoru sworn on 23rd May 2014 that “the reason the defendants/respondents have refused and or declined to call for annual general meetings is due to the massive plunder, misuse and mismanagement of the societies funds and assets which facts they fear may come to light if the management is subject to scrutiny at a general meeting.”

Nonetheless, the defendants have attached financial statements for the Association for the years ending 31st December 2010 and 31st December 2011 respectively, prepared by Ngigi & Partners CPA (K) showing the value of the assets both current and fixed and at page 4, note 5 shows rent as an income with surpluses for the year.

The cited defendants have also sworn replying affidavits denying collecting rent but shifting the responsibility of receiving rent, if at all any was received, to the 1st defendant who by the time they were all swearing the affidavits in reply hereto, was dead. She died at 84 years as shown by the copy of burial permit attached.

I have also examined the copy of association’s constitution as attached to the application herein, and on the office bearers at page 3, they are listed as:

- i. The chairlady/chairman
- ii. The vice chairlady/chairman
- iii. The secretary
- iv. The assistant secretary
- v. The treasurer
- vi. The assistant treasurer

All of whom shall be fully paid-up members of the society and shall be elected at the annual general meeting to be held each year.

At page 4 of the said Constitution, the duties of the office bearers are enumerated and of particular relevance, is that (1) the chairman had the following block duties,

- i. **“Unless prevented by illness or other sufficient cause, preside over all meetings of the committee and at all general meetings. In cases of urgent matters where the committee cannot be consulted the chairman shall take such decisions and give such directions as she shall deem fit in the circumstances which decisions and directions shall however be subject to ratification by the committee.”**
- ii. **The vice chairman shall perform any duties of the chairman in her absence.**
- iii. **The Secretary:**

“Shall deal with all correspondence of the society under the general supervision of the committee. She shall issue notices convening all the meetings of the committee and all general meetings of the society and shall be responsible for keeping minutes of all such meetings and for the preservation of the records of proceedings of the society and of the committee.

- iv. **The Assistant Secretary – shall perform all duties of the secretary and such other duties as shall be assigned to her by the Secretary or the committee whether the Secretary is present or not.**
- v. **Treasurer:- shall receive and shall also disburse, under the directions of the committee, all monies belonging to the society and shall issue receipts for all monies received by her and preserve vouchers for all monies paid by her. The Treasurer is responsible to the committee and to the members that proper books of account for all money received and paid by the society are written up, preserved and available for inspection.**
- vi. **The Assistant Treasurer: Perform such duties as may be specifically assigned to her by the**

Treasurer or by the committee and in the absence of the Treasurer shall perform the duties of the Treasurer. Under Rule 12 (b) of the said Constitution, page 10, All monies and funds shall be received by and paid to the Treasurer and shall be deposited by her in the name of the society in any bank or banks approved by the committee.

vii. A sum not exceeding Sh. 100 or such amount as the committee may determine may be kept by the Treasurer for petty disbursements of which proper account shall be kept.

With all the above, it is clear that the responsibility to receive all monies on behalf of the society was placed on the Treasurer by the Society/Association's Constitution, and any attempt to say that any other person, including the deceased Chairman is the one who received the rent on 5th June 2014 and 7th June 2014 cannot have any basis and or be entertained as it would be contrary to the said Constitution by which the members and office bearers were bound.

Furthermore, it is not denied that the Chairlady – 1st defendant at the material time and as described by the process server, was “*an elderly frail lady.*” The burial permit shows she was 84 years. In as much as being sickly or almost bedridden cannot in itself bar the 1st defendant from collecting rent as alluded to by the 2nd – 5th defendants in their depositions, it is unbelievable in the circumstances as the Constitution of the Association clearly imposes that duty on the Treasurer to collect all monies due to the Society. My view is that the Treasurer and the rest of the defendants are simply shifting that blame on the deceased Chairlady because “*the dead tell no tales*”, which blame, as I have stated above, is unbelievable for an 84 year old, frail looking lady to abscond her responsibilities as Chair and start collecting rent from tenants!

The only person, in my view, who could have collected rent on 5th or 6th June 2014 from the tenants, in this case M/s Teresa Wambui as shown by a receipt No. 28 RWM2 was none other than the treasurer Margaret Mumbi Miako – the said receipt has the rubber stamp for the Lari Division Women Association for Sh. 4,000/-. She is the deponent of an affidavit of 16th July 2014 stating:

- (3) That I was served with documents referred to in paragraph 3 of the affidavit of service.
- (4) That tenants of Lari Division Women Association pay their rent in the second week of every month and the second week of June commenced on the 9th June 2014 and I doubt if any tenant paid rent on 5th June 2014 as alleged by the 1st plaintiff.
- (5) That rent from tenants of Lari Division Women Association is paid to /received by the 1st defendant/respondent who passed on on the 11th June 2014 – attaching the burial permit.
- (6) That if at all any rent was collected/paid on 5th June 2014 which I doubt, the same was paid to/collected by the 1st defendant/respondent who must have banked the same in the bank account of Lari Division Women Association.
- (7) That my main responsibilities as Treasurer of Lari Division Women Association is to receive membership fees, contributions/donations for various causes of the association and paying dividends to members, that I am not involved in the collection of rent from tenants of Lari Division Women Association”

Throughout her depositions, the Treasurer never denied that Teresiah Wambui was the Association's Tenant. She also did not deny that rent was received or paid to the Association. She uses the terms ‘**I doubt**’ if any tenant paid any rent on 5th June 2014 at paragraph 4 and paragraph 6. There is a whole world of difference between the words “**I doubt**” and “**I deny**” receiving the alleged rent.

This court makes an inference that from the association's Constitution which gives the Treasurer the responsibility to receive all monies and to issue receipts for any monies received, it was the Treasurer who received such monies as rent due to the Society and no other. The court further finds that the defendants herein were only shifting the blame on the deceased 1st defendant which cannot,

unfortunately, hold, and more so especially when she was ailing and on her death bed. The submission by counsel for the defendants that the plaintiff should prove beyond reasonable doubt that Teresia Wambui paid rent to the society has no legal or factual basis or at all for the following reasons: that in as much as the case of contempt of court is usually a quasi-criminal proceeding in nature, and as the liberty of a person is at stake, therefore a higher standard cannot be equated to that which is required in criminal cases. It is simply higher than in civil cases. This was the principle espoused in the Court of Appeal decision in **Mutitika – Vs – Baharini Farm Ltd [1985] KLR 229, 234** that:

“The standard of proof in contempt proceedings must be higher than proof on balance of probabilities, almost but not exactly, beyond reasonable doubt ... the standard of proof beyond reasonable doubt ought to be left where it belongs, to wit, criminal cases. It is not safe to extend the latter standard to an offence which can be said to be quasi-criminal in nature.”

I need not overemphasize the point made in the above case. Although counsel for the defendants expected the tenant to swear an affidavit to state **“to whom”** she had paid the rent, it is clear to my mind that that was not necessary as the defendants have not by their own depositions denied the existence of Teresia Wambui as the Association’s tenant and neither has the Treasurer who is **“constitutionally”** obliged to receive such rent being monies, and issue receipts denied that the said Teresia was a tenant. The Treasurer has only expressed **“doubt”** that the rent could have been received in the first week of June as tenants normally pay during the second week which according to her, fell from 9th June 2014.

Further, the Treasurer has deposed evasively that in the event that such rent was received as alleged, that it was the deceased 1st defendant who received the same. This court finds that there was no such responsibility placed on the deceased to receive rent hence that argument is superfluous and defeatist. Furthermore, in her (Treasurer’s) paragraph 6 of the replying affidavit, she states that the 1st defendant/deceased respondent must have banked the same in the bank of Lari Division Women Association. Again, that deposition is to say the least, simplistic and unbelievable as the Treasurer under the **‘Constitution’** as cited above was under the responsibility to receive money, issue receipts, pay out as authorized by the committee and bank all monies (see Rule 12 [b]) with the power to keep only sums not exceeding Sh. 100/- or such monies as may be kept by the Treasurer for petty disbursements of which proper account shall be kept. (See Rule 12 [d]).

The rest of the defendants deny being aware of the rent being collected and or collecting such rents from the tenants on the 5th June 2014, although they have also adopted a superfluous deposition by the Treasurer that the rent payable is received by the Chairlady of the Association if at all, just to escape liability, by using her as a scape goat. Regrettably, that defence is not available to them.

So then, was the order issued on 3rd June 2014 prohibiting the respondents from dealing in any manner with the Association’s assets disobeyed?

For this court to hold the respondents/defendants for contempt of a court order, such order must be clear and unambiguous and it must be satisfactorily proved though not beyond reasonable doubt like in criminal cases, that there is some evidence to incriminate the contemnor. In this case, it is clear that the Treasurer/4th defendant Margaret Mumbi Miako was served with the said order and she admits this fact in her paragraph 3 of her replying affidavit.

She has not complained that the said order was in any way unclear or unambiguous. The said order clearly

“restrained/prohibited them, their agents, servants, employees or whosoever from acting, occupying, transacting, holding, participating, or in any way dealing with the assets, incomes and affairs of the Lari Division Women Association and the same to remain in place until the hearing date 21st July 2014.”

The above order was clear and unambiguous as supported by the notice issued on 3rd June 2014 to all the

tenants attaching the court order and advising them not to pay rent to the officials but instead deposit into the Association's account No. 004111631 held at K-Unity Savings and Credit Co-op Society Kiriita Branch.

Having said all that, I find that the 2nd, 3rd and 5th defendants/respondents are not liable for breach of the court order as it was not a collective responsibility between them and the 4th defendant/respondent to collect rent from the tenants. It was the responsibility of the 4th defendant as imposed by the Association's constitution to receive all monies or income belonging to the Association and to issue receipts for such monies and bank the same into the Association's bank account.

This responsibility could only be delegated to the Assistant Treasurer and no other office bearer.

Therefore, the Treasurer Margaret Mumbi Miako having received a court order prohibiting her from dealing in any way with the assets or income of the Association, and having found that she did receive rent from Teresiah Wambui amounting to Sh. 4,000/- due to the Association on 5th June 2014 a day after being served with the order of this court restraining her from so receiving, I find her in brazen defiance of the said court order and I accordingly proceed to cite her for contempt of court.

And having found that the 2nd, 3rd and 5th defendants did not disobey any court order, I accordingly discharge them.

**Dated, signed and delivered at Nairobi this 10th Day of
November, 2014.**

R.E. ABURILI

JUDGE

Mitigation by Mr. Mwaura:

The 4th defendant/respondent is an old lady who suffers from high blood pressure. She received the court order and before she could instruct me, I could have instructed her to obey the court order. She acted through ignorance of the law. She is remorseful, she has learnt lessons that court orders must be obeyed and she will obey in future.

I pray for leniency and impose a light sentence. I pray for a warning and reprimand as an act of mercy, pardon her and discharge her with a very clear warning never to disobey any court order.

Sentencing by Court:

Judicial power in Kenya is vested in the courts and other Tribunals established under the Constitution and it is a fundamental tenet of the rule of law that court orders must be obeyed and it is not open to any person or persons to choose whether or not to comply with or to ignore such orders as directed by the court to him or her. And it matters not the status of the person expected to obey the court order.

Citing and punishing a party for contempt is one way of ensuring that court orders are obeyed by all and sundry. Contemnors undermine the authority and dignity of the courts and must be dealt with firmly so that the court's authority is not brought into disrepute. It is not for the court to allow a party to steal a march on it and obtain undeserved forensic advantage by willfully and flagrantly disobeying court orders.

It is an unqualified obligation of every person against whom an order has been made by the court of competent jurisdiction to obey it unless and until that order is discharged. It matters not that the order may be illegal, irregular or even made without jurisdiction. As long as such order has not been reviewed, varied or set aside, it is the duty of the person against whom it is issued to comply and complain later, by putting mechanisms in place to have it set aside or varied.

The consequences of failure to obey court orders are that any action taken in breach of that order is a nullity and of no effect. The interim injunction granted against the defendants was not meant to finally determine the dispute between the parties. It was meant to give an interim protection in order not to expose the assets/income of the Association to preventable perils or risks by inaction or action or omission as sought by the plaintiffs. The orders were thus simply meant to keep the subject matter *in situ*.

In this case, to prevent the wastage of income for the association's membership of over 400 women. The 4th defendant chose to willfully disobey the court order as issued and served by collecting rent from one of the tenants Teresiah Wambui. She must therefore be ready to face the consequences of such disobedience however undesirable.

Having considered the mitigations as presented and pleaded on her behalf by her advocate, I order that the 4th defendant Margaret Mumbi Miako do pay into court the sum of Sh. 50,000/-, fifty thousand Kenya shillings with immediate effect and in default, she is sentenced to prison to serve a term of 6 months imprisonment.

Orders accordingly.

R.E. ABURILI

JUDGE

Mr Mwaura:

I pray for stay of the order herein for 2 weeks to enable the contemnor to raise the funds and pay into court. The suspension period sought is reasonable.

We may be given a mention date to see whether she has complied with the court order.

R.E. ABURILI

JUDGE

Court:

As indicated earlier in the ruling, contempt of court is a crime against the authority of the court. The court has already pronounced itself on the consequences for failure to obey its orders. Having taken into account the mitigating circumstances as ably submitted by Mr. Mwaura advocate on behalf of the 4th defendant, and the plea for suspension of the orders committing the 4th defendant for contempt.

I order that the said sentence and payment into court shall only be suspended upon the 4th defendant executing a surety bond of Sh. 100,000/- with one surety. Failure to which the orders herein as issued for contempt stand undisturbed.

She may therefore be released on a bond of Sh. 100,000/- with one surety of similar amount to pay the Sh.

50,000/- within 2 weeks (14 days) from the date hereof.

R.E. ABURILI

JUDGE

10TH NOVEMBER 2014